

ORIGINAL
BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

IN RE APPLICATION(S) OF:)	MM Docket No. 92-132
)	
CARNEGIE-MELLON STUDENT GOVERNMENT CORPORATION)	File No. BPED-891108MA
(WRCT-FM, Pittsburgh, PA))	
)	
HE'S ALIVE, INCORPORATED)	File No. BPED- 900606MC
(Murrysville, PA))	
)	
For Construction Permit)	

To: Hon. John M. Frysiak, Administrative Law Judge

**JOINT REQUEST FOR APPROVAL
OF SETTLEMENT AGREEMENT**

Carnegie-Mellon Student Government Corporation ("CMSGC") and He's Alive, Incorporated ("HAI"), by their respective attorneys, and pursuant to Section 73.3525 of the Rules (47 CFR §73.3525), hereby respectfully submit this Joint Request for Approval of Settlement Agreement, and request that the Settlement Agreement attached hereto, which accomplishes a "global" settlement of this proceeding, be approved by the Commission, that the engineering amendments submitted by the parties pursuant to the Settlement Agreement be Accepted, and that the Applications of CMSGC and HAI be granted, and this proceeding terminated. In support whereof, the following is shown:

Introduction

1. The Application of CMSGC seeks a construction permit to increase the ERP of WRCT-FM, (Channel 202A), serve Pittsburgh, Pennsylvania, is currently mutually exclusive with the Application of HAI for a new noncommercial FM Station on Channel 201A in Murrysville, Pennsylvania. As presently proposed, only one application can be granted. In the absence of a settlement whereby the parties each modify their proposals, or one party agrees to dismiss, a costly and time-consuming

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evidentiary hearing must be held by the Commission.

The Settlement Agreement

2. The parties, upon discussions between principals and/or their counsel, have concluded that the public interest would best be served by settling this case, and modifying their engineering proposals to eliminate the present mutual exclusivity. To that end, HAI has executed a Settlement Agreement with CMSGC whereby each party agrees to reduce the amount of radiation generated toward the other through the use of a directional antenna. Attached hereto as Exhibit 1 to this Joint Request is a copy of the Settlement Agreement between CMSGC and HAI.

Public Interest Showing

3. Grant of this Joint Request, and Approval of the Settlement Agreement and amendments submitted in connection therewith, would serve the public interest. The resources of both the parties and the Commission would be conserved, and the communities of Pittsburgh, Pennsylvania and Murrysville, Pennsylvania would receive at an early date expanded aural broadcast service (in the case of CMSGC), and new aural broadcast service (in the case of HAI). The Commission has itself encouraged mutually exclusive applicants in comparative hearing proceedings to seek an alternative to litigation to resolve the mutual exclusivity, and to that end has adopted policies and procedures consistent with that goal.

4. Also attached hereto as *Exhibit 2 (Exhibits 2A and 2B* are the Declarations of principals of each of the Applicants in this proceeding, stating why they believe the settlement is in the public interest, that their respective applications were not filed for the purpose of reaching or achieving a settlement, and that the settlement agreement is the only agreement between the parties, no other consideration having been paid or promised to be paid.

5. By separate pleading, each of the parties has filed a petition for leave to amend their respective applications. Because these amendment must both be found acceptable in order to eliminate the mutual exclusivity, the joint movants request that

they be considered together, the acceptance of one being contingent on the acceptance of the other.

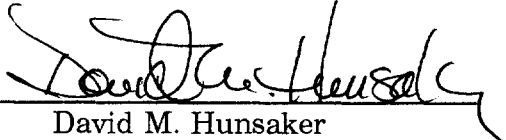
Conclusion

WHEREFORE, the above premises considered, the undersigned parties hereby respectfully request: (1) that this Joint Request for Approval of Settlement Agreements be GRANTED; (2) that the Settlement Agreement attached hereto as Exhibit 1 be APPROVED; (3) that the petitions for leave to amend the HAI and CMSGC applications be GRANTED, and the amendments proffered therein be ACCEPTED; and (4) that the Applications of CMSGC and HAI, as amended be GRANTED.

Respectfully submitted,

**Carnegie-Mellon Student
Government Corporation**

He's Alive, Incorporated

By: 
David M. Hunsaker

Putbrese, Hunsaker & Ruddy
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, Virginia 22101

Its Attorney

By: _____
Lee J. Peltzman, Esquire

Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Washington, DC 20015-2003

Its Attorney

September 30, 1992

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Respectfully submitted,

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Government Corporation**

He's Alive, Incorporated

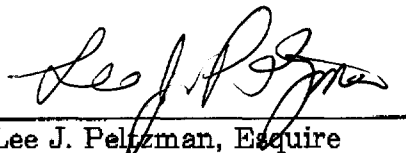
By: _____

David M. Hunsaker

Putbrese, Hunsaker & Ruddy
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, Virginia 22101

Its Attorney

By: _____


Lee J. Peltzman, Esquire

Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Washington, DC 20015-2003

Its Attorney

September 28, 1992

Exhibit 1

SETTLEMENT AGREEMENT

between

CARNEGIE-MELLON STUDENT GOVERNMENT CORPORATION

and

HE'S ALIVE, INCORPORATED

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is made as of the 28 day of September, 1992, by and between:

(i) **Carnegie-Mellon Student Government Corporation**, a Pennsylvania corporation ("CMSGC"); and

(ii) **He's Alive, Incorporated**, a _____ corporation ("HAI") (hereinafter collectively the "Parties").

W I T N E S S E T H :

WHEREAS, CMSGC has pending before the Federal Communications Commission (the "FCC") an Application for construction permit to improve the facilities of noncommercial, educational FM Station WRCT-FM, Channel 202A, Pittsburgh, Pennsylvania, (File Number BPED-891108MA); and

WHEREAS, HAI has pending before the FCC an Application for a construction permit for a new noncommercial, education FM broadcast station to operate on Channel 201A at Murrysville, Pennsylvania (FCC File No. BPED-900606MC); and

WHEREAS, these two applications, are mutually exclusive such that only one of the applications as presently proposed can be granted by the FCC; and

WHEREAS, the parties have determined that by each amending their applications to reduce the amount of radiation in the direction of the other, the mutual exclusivity may be eliminated so that both applications, as modified, can be granted by the FCC; and

WHEREAS, the Parties recognize that it is in the best interests of both of them to avoid the time and expense of continued litigation and thereby to conserve the time and resources of the FCC and the Parties, and that it is in the best interest of the public to avoid delay in implementation of the enhanced broadcast service by WRCT-FM and the new broadcast service to Murrysville, Pennsylvania that would result from further prosecution of these mutually exclusive applications.

NOW THEREFORE, in consideration of their mutual representations and promises stated herein and intending to be bound, the Parties covenant and agree as follows:

1. ***FCC Consent.*** This Agreement is entered into subject to approval by the FCC or its delegatee, and it shall be void unless the FCC or its delegatee approves it. The Parties shall immediately make good faith efforts to resolve any and all FCC objections in order to obtain prompt approval by the FCC. If the FCC or its delegatee has not approved this Agreement within six (6) months from the effective date hereof, then either Party, upon written notice to the other Party, may terminate this Agreement.

2. ***Joint Request for Approval of Agreement.*** Within five (5) days from the date of this Agreement, the Parties agree to file with the FCC the following:

(a) A petition for leave to amend, and amendment to their respective applications, which amendments shall reduce the amount of radiation in the direction of the other party, such that when both amendments are considered together, the prohibited overlap of interfering contours under the FCC Rules shall have been eliminated.

(i) Each party shall be responsible for the preparation of the amendment to its own application and shall bear the expense associated with the same.

(ii) It is understood and agreed that the submission and acceptance of each amendment shall be made contingent upon the submission and acceptance of the other, since only by the acceptance of both amendments together can the mutual exclusivity be eliminated.

(b) a Joint Request for Approval of this Agreement ("Joint Request"), which shall include:

(i) a request that the FCC accept the proposed amendments of each of the parties, and thereafter grant the Applications of CMSGC and HAI, as amended;

(ii) a copy of this Agreement and other supporting documentation required by Section 311(c) of the Communications Act of 1934, as Amended, including the written declarations required under Section 73.3525 of the Rules of the FCC (47 CFR §73.3525).

(c) CMSGC shall prepare, at its expense, the Joint Request for Approval of this Agreement. HAI shall provide to CMSGC the written declaration required by Section 73.3525 of the Rules, and signed by a duly authorized principal of HAI.

(d) The Parties shall, thereafter promptly request the continued suspension of all procedural dates pending the resolution of settlement.

3. Consideration. No monetary consideration has been paid or will be paid by either party by the other for entering into this Agreement. The sole consideration supporting this Agreement is the mutual cooperation of the two parties in amending their respective applications in a manner that, when together considered, the applications as amended will no longer be mutually exclusive under the FCC's processing criteria.

4. Obligations of the Parties.

(a) CMSGC and HAI shall cooperate with the other in good faith and with the FCC or its delegatee, by expeditiously furnishing to each other and to the FCC or its delegatee, as may be necessary, any additional information which reasonably may be required, and by the doing of all other acts reasonably necessary to effectuate the objectives of this Agreement

(b) Each party shall retain full and unrestricted authority to prosecute its application. Neither party shall take any action to impede or delay consideration and grant of its own or the other party's application, and shall take all reasonable steps promptly to obtain a grant of both of the applications from the FCC or its delegatee.

(c) Each party agrees that it will take no steps to delay or oppose approval of the Joint Request by the FCC or its delegatee.

(d) The parties understand and agree that there is no assurance of the approval by the FCC of the Joint Request; accordingly, unless due to a breach of this agreement, there shall be no liability or obligation of any kind on the part of any Party if the Joint Request is not approved by the FCC. If the FCC shall deny the Joint Request, and not approve this Agreement, then both parties shall be free to fully prosecute their respective applications.

5. **Notices.** Any notice required under this Agreement shall be in writing. Any payment, notice or other communication shall be deemed made or given when it is delivered personally, or mailed by certified United States mail, postage prepaid, to the following addresses:

To CMSGC:

Mr. Todd Padezanin, Manager
Radio Station WRCT
Carnegie-Mellon University
5020 Forbes Avenue
Pittsburgh, PA 15213

To HAI:

Dewayne Johnson, President
He's Alive, Incorporated

With a copy to:

David M. Hunsaker, Esquire
Putbrese, Hunsaker & Ruddy
6800 Fleetwood Road, Suite 100
P.O. Box 539
McLean, Virginia 22101

With a copy to:

Lee J. Peltzman, Esquire
Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Washington, DC 20015-2003

6. **Remedies Upon Default.** If either Party defaults under this Agreement, the other Party shall have available to it all remedies to which it is entitled, at law or in equity.

7. **Waiver.** Failure of any Party to complain of any act or omission on the part of any other Party in breach of this Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said Party of any rights hereunder. No waiver by any Party at any time, express or implied, or any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.

8. **Governing Law.** This Agreement shall be governed by and construed in accord with the laws of the Commonwealth of Pennsylvania.

9. **Benefit.** This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors, heirs, and permitted assigns.

10. **Entire Agreement.** This Agreement embodies all the terms of the understandings between the Parties and contains all of the terms and conditions agreed upon with respect

to its subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between the Parties relating to the subject matter of this Agreement which are not fully expressed herein. By signing below, the Parties acknowledge that they have read this Agreement and are fully cognizant of these provisions.

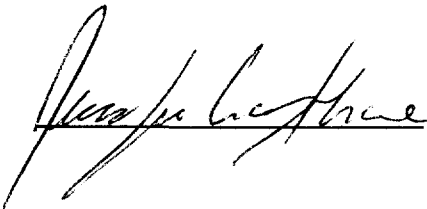
11. **Counterparts.** This Agreement may be executed in one or more counterparts, and all so executed shall constitute one Agreement, binding on the Parties, notwithstanding that the Parties are not signatories to the original or the same counterpart.

12. **Headings.** The headings of the paragraphs of this Agreement are inserted and for reference purposes only. They in no way define, limit or describe the scope of this Agreement or the intent of any of its provisions.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the year and date first above written.

Witness:

CARNEGIE-MELLON STUDENT
GOVERNMENT CORPORATION



By: Judd Paderjani
Title: General Manager and
Member, Governing Board

Witness:

HE'S ALIVE, INCORPORATED

By: _____

Title: _____

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the year and date first above written.

Witness:

CARNEGIE-MELLON STUDENT
GOVERNMENT CORPORATION

By: _____

Title: _____

Witness:

HE'S ALIVE, INCORPORATED

By: Dennis J. [Signature]

Title: President

Exhibit 2

DECLARATIONS OF PARTIES

DECLARATION OF TODD PADEZANIN

1. My name is Todd Padezanin. I am General Manager and Member of the Governing Board of Carnegie-Mellon Student Government Corporation ("CMSGC"), an Applicant before the Federal Communications Commission ("FCC") for a Construction Permit to increase power of noncommercial, educational FM Station WRCT-FM on Channel 202A in Pittsburgh, Pennsylvania (FCC File No. BPED-891108MA).

2. CMSGC's Application is mutually exclusive with that of He's Alive, Incorporated ("HAI"), applicant for a permit to construct a new noncommercial educational FM Station on Channel 201A in Murrysville, Pennsylvania (FCC File No. BPED-900606MC). The Applications of CMSGC and HAI have designated for consolidated hearing by the FCC.

3. CMSGC has entered into a Settlement Agreement with HAI, whereby both CMSGC and HAI have each agreed to amend their respective applications to reduce the amount of radiation directed toward each other, so that the mutual exclusivity will be eliminated. The Settlement Agreement is included as an exhibit to a Joint Request for Approval of Settlement Agreement, which is being filed with the Commission. Other than the mutual cooperation pledged by each party to amend its application, as set forth in the Settlement Agreement, neither party has paid nor promised to pay to the other any other consideration for the amendment of its application.

4. I believe approval of the Settlement Agreement and acceptance of the amendments proffered thereby would be in the public interest. It would completely eliminate the need to hold an evidentiary hearing in this proceeding, thereby conserving valuable agency and private resources, and would provide for the expeditious commencement of significantly expanded service provided by WRCT-FM, and for a new first aural broadcast service to Murrysville, Pennsylvania.

5. In compliance with Section 73.3525(a)(2) of the FCC Rules, this is to state that CMSGC did not file its application with the intent or for the purpose of effecting a settlement of this case. CMSGC was, and is fully prepared to prosecute its application in a vigorous manner, if required.

6. Under penalty of perjury, I hereby declare that the foregoing facts are true and correct to the best of my knowledge, information, and belief, except for those facts which are a matter of official notice, and as to those, I believe them to be true.

9/24/92
Dated

Todd Padezanin
Todd Padezanin

SWORN DECLARATION

I, Dewayne Johnson, President of He's Alive Incorporated, applicant for a new construction permit for a non-commercial educational FM station at Murrysville, Pennsylvania state as follows:

Neither He's Alive Incorporated nor any of its principals have received nor paid nor been promised nor promised to pay any consideration for entering into an agreement to settle this proceeding other than the mutual cooperation of He's Alive Incorporated and Carnegie-Mellon Student Government Corporation in amending their respective applications in a manner that will result in the applications no longer being mutually-exclusive under the FCC's rules.

He's Alive Incorporated did not file its application for the purpose of entering into a settlement.

The foregoing statement is made under penalty of perjury.

Date: September 28, 1992


Dewayne Johnson

CERTIFICATE OF SERVICE

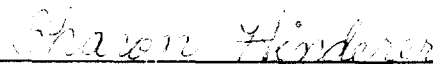
I, Sharon Hinderer, Secretary in the law firm of **Putbrese, Hunsaker & Ruddy**, hereby certify that I have on this 30th day of September, 1992, sent, by United States Mail, Postage prepaid, copies of the foregoing, "**Joint Request for Approval of Settlement Agreement**" to the following:

Hon. John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street, NW
Room 223
Washington, DC 20554

Lee J. Peltzman, Esquire
Baraff, Koerner, Olender & Hochberg, PC
5335 Wisconsin Avenue, NW
Washington, DC 20015
Counsel for He's Alive, Incorporated

James Shook, Esquire
Charles Dziedzic, Esquire
Hearing Branch - Mass Media Bureau
Federal Communications Commission
2025 M Street NW
Room 7212
Washington, DC 20554

*Courtesy copy



Sharon Hinderer